



IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE

AND

IN THE MATTER OF THE COMPLAINT MADE BY HELEN
NIEDZWIECKI THAT SHE WAS DISCRIMINATED AGAINST
BY BENEFICIAL FINANCE SYSTEM WITH RESPECT TO
EMPLOYMENT BECAUSE OF HER MARITAL STATUS.

DECISION

JUNE 26, 1981

E.J. RATUSHNY
BOARD OF INQUIRY

DECISION

The Complainant, Helen Niedzwiecki is a high school graduate who was employed by Avco Financial Services (AVCO) in Guelph from July of 1974 to December of 1978. During this period, she proved to be a diligent and capable employee and advanced to the position of assistant manager. There is no question that she was well-qualified for the position of assistant manager, that she performed in that capacity for a substantial period of time and that her work was of high quality.

In December of 1977, the Complainant's mother was stricken by cancer. She died some three weeks later, leaving two school-age children at home in addition to her husband and the Complainant, who then assumed additional burdens in helping to care for her younger brother and sister. By March, the additional strain led to her request that the mobility requirement of her job (involving day-trips by car to other centres) be removed, temporarily. The request was granted. Documentary evidence was introduced by the Respondent to show that, in fact, she had been demoted from the position of assistant manager to that of administrative assistant. However, apart from the reduced travelling (which was later resumed) the weight of the evidence indicates that there was no change in the Complainant's duties and no change in her salary. The Complainant testified emphatically that she was not aware of any demotion and this Board accepts her evidence in that respect.

While the Complainant was employed by AVCO, she met her future husband, who was then manager of AVCO's Kitchener office. He moved to Kingston in December of 1978 to become manager of AVCO's office in nearby Ganonoque and the Complainant also moved in order to be with him. According to her testimony, she assumed the position of "temporary administrative assistant" with AVCO on the basis that the position of assistant manager was already filled in Kingston.

The couple planned to marry on April 21, 1979 and to take a five-week honeymoon. However, AVCO had a company policy that it would not employ both a husband and a wife within the same district. The Complainant intended to resign and, on April 18th, a few days before the wedding, she visited the office of the Respondent in Kingston to discuss employment prospects. She informed the manager, Mr. Gib Hannah, that she would be resigning from AVCO and seeking employment upon her return from her honeymoon on May 24th. Mr. Hannah did not have authority to hire but was responsible for the initial interviewing and decision whether or not to "process" an applicant in the sense of recommending that he or she be hired.

According to Mr. Hannah, there was no vacancy available at the time since one Jean Henderson had been hired as assistant manager just the week before. According to the Complainant, Mr. Hannah stated that the Respondent (Beneficial) was not planning

to fill the position of assistant manager but that he would speak with his supervisor and let her know when she returned "if they changed their minds about the position". Mr. Hannah testified that he told her that he "would check on" the company's policy with respect to conflict of interest (since her husband worked for a competitor). The notes of Mr. Polley, of the Ontario Human Rights Commission, suggest that Mr. Hannah was going to check on whether a married woman could be hired. The conflict of evidence on this point was not resolved.

Mr. Hannah made it clear that he was perfectly satisfied that the Complainant had excellent qualifications for the position of assistant manager. She had told him that she was, in fact, an assistant manager with ACCO at the time. While she had not known of her demotion in Guelph, she was certainly aware that she did not hold the position of assistant manager in Kingston. Her explanation at the hearing for this lack of candour was not convincing. However, this misrepresentation did not influence Mr. Hannah in his assessment of her qualifications.

On or about June 25th, 1979, in response to a newspaper advertisement, the Complainant arranged to see Mr. Hannah again. Jean Henderson had been terminated earlier that month and the position of assistant manager became vacant again. There is a major conflict in the testimony of the Complainant and that of Mr. Hannah as to what had transpired at this meeting. It is crucial to the determination of the Complaint.

The meeting ended with a heated exchange and the Complainant left quite upset. She was not hired and, over the next few months, made numerous inquiries and applications for other positions in the Kingston area. In January of 1980, her husband took another position with the Bank of Montreal and the couple moved to Orillia where the Complainant also commenced work with the Bank of Montreal.

The Complainant's version of the crucial June 25th meeting is as follows: She asked Mr. Hannah to reconsider her application in relation to the vacancy created by the departure of Jean Henderson. He responded by saying that he had spoken to his supervisor and was unable to hire her. He added that he was looking for a male for the position in question since a male was easier transferable, had more responsibilities and was less likely to say no to a transfer because he was "the main money-maker". Mr. Hannah stated that he found it difficult to believe that AVCO would transfer her husband in order to accommodate her, to which she responded that AVCO was quite willing to transfer in order to accommodate family situations. She tried to convince him that she was willing to transfer to other centres, including Toronto and Windsor if necessary. Towards the end of the conversation he added that if he had a position for a cashier, he would hire her "on the spot". (All persons employed by Beneficial as cashiers are female).

The Complainant conceded on cross-examination that she had informed Mr. Hannah that she was prepared to commute to any other centre within an hour or a one and one-half hour drive from Kings-

ton. However, she stated that this comment was strictly in response to his suggestion that the position might be for another branch within the Kingston district since, as she stated, that is the approximate driving range within the district. She also recalled Mr. Hannah mentioning briefly to her that because her husband worked for AVCO, it might be difficult to hire her at Beneficial because of a conflict of interest problem. However, the main thrust of the conversation involved Mr. Hannah taking the position that she would not be transferable because of her husband and her attempting to convince him that she was transferable.

Mr. Hannah presented the following, different version of the facts in his testimony: He told her that the person appointed to the position in question would be asked to transfer, possibly within six months. She responded by saying that she would be willing to transfer within driving distance. When he replied that the transfer might be to some place like Windsor or Toronto, she did not say that she would be willing to transfer to such a location but, instead, argued with him and tried to show him that it would not be necessary to relocate - "Trying to show me how the company runs". The crux of the matter was transferability and the applicant for the job did not satisfy him that she would meet that requirement.

Mr. Hannah denied that the Complainant at any time stated that she was willing to transfer outside of the area to Toronto or Windsor. He also denied stating that he was seeking a male for the position. He stated that the Complainant was not considered for the position because of three factors: conflict of interest, limited transfer-

ability and her attitude. He added that, during the meeting, he wrote a letter, at her request, for unemployment insurance purposes explaining that her application had not been processed because of her restricted mobility. However, the letter was written in his own handwriting, no copy was made and the original was not received by the Unemployment Insurance Office. The Complainant categorically denies having requested or received any such letter.

Both the Complainant and Mr. Hannah were subjected to well-prepared, vigorous and effective cross-examination.

On balance, this Board has found the Complainant to be the more credible witness with respect to the key facts of the case. Reference has already been made to her lack of candour in one respect. Her explanation of having thrown away her notes and the absence of an express statement of her willingness to transfer outside of the Kingston district, either in her Complaint or in the notes of her interview with the human rights officer, also have been considered. However, she withstood an aggressive cross-examination with convincing demeanour.

Mr. Hannah, on the other hand, was not as convincing. He did not bother to complete the back of the Complainant's Interview Card in spite of an express company policy which states emphatically:

NOTE: Whenever an applicant is turned down as a result of the preliminary interview, it is an absolute requirement to document the reason in detail on the reverse side of the Interview Card and retain it in the office for a period of one year.

His explanation was that the interview did not really proceed since he had initial doubts about the applicant's transferability because of her recent marriage which she was unable to dispel. Otherwise, he would have provided her with an actual application form. However, the company policy explicitly states that:

The Interview Card is a short form application to be completed by all applicants. It provides the interviewer with enough information to make a preliminary decision on the applicant's basic qualifications for employment.

It would seem to have been designed for the very situation of the June 25th meeting.

Moreover, Mr. Hannah's testimony indicates a pre-conceived notion with respect to the Complainant's transferability based upon her marital status alone. The explanation referred to in the previous paragraph was given by him on cross-examination. Mr. Hannah also testified that his first reaction to the Complainant's job opportunities with the company, at the initial meeting on April 18th, was negative. When testifying with respect to the meeting of June 25th, he stated that: "She had already confirmed my doubts that she would not transfer outside of the area". Mr. Hannah seems to have commenced the June 25th meeting with the assumption that, because of the Complainant's marital status, she was not transferable and she would have to persuade him to the contrary.

However, perhaps the most significant evidence is the set of notes of Mr. Hannah's subsequent interview with an officer of the Ontario Human Rights Commission. The notes were read over by Mr.

Hannah at the time and signed by him. Amongst the statements attributed to him and which, on cross-examination, he agreed to having made are the following: it would be ridiculous to think that she would be able to transfer since she was married only a month ago; it is absurd to hire a married woman who one year later may say that she cannot transfer because her husband works in Gananoque [emphasis added]; the policy of the company was to hire a young man for the management trainee program; it was not feasible to consider a married woman. The notes also contain the statement: "Definitely looking for a person who is single — easily transferable". However, Mr. Hannah denied making this latter statement. Nevertheless, he agreed that he had read the notes, signed them and that his recollection was probably better at the time the notes were made.

It is now generally accepted by boards of inquiry under the Ontario Human Rights Code that a contravention has occurred where the discriminatory act is a "proximate cause" (of the dismissal, etc.) even though it may be present with other proximate causes which are permitted by the Code. (See R. v. Bushnell Communications Ltd. (1974) 40 O.R. (2d) 238 and the useful review by Chairman Cumming in the Complaint of Pearlina Reid against Russel Steel Limited dated May 19, 1981, at p. 3). Therefore, if the Complainant's marital status was a proximate cause of not hiring her or processing her application, a contravention would be established even if there were other, acceptable, proximate causes.

This Board finds that the central reason why the Complainant's application was not processed was Mr. Hannah's conclusion that she could not meet the transferability requirement. Moreover, transferability was a reasonable requirement for the position in question. However, the Board also finds that Mr. Hannah came to the conclusion that the Complainant was not transferable simply on the basis of her marital status and without justification. During the main interview, he refused to move beyond his pre-conception that a recently married woman, whose husband held a management position, would not accept a transfer. He was only prepared to consider her for the more junior position of "cashier".

There is conflicting evidence with respect to whether or not the Complainant had specifically stated that she would be prepared to transfer to Toronto or Windsor. The weight of evidence supports the view that she did make such a specific statement. Even if she did not, this Board accepts her testimony that she did not restrict her mobility to within the Kingston district and that she did present herself as being prepared to fulfil the mobility requirements of the position. Mr. Hannah was simply not prepared to accept her on that basis because she was a married woman.

In the discussion which followed, the Complainant attempted to minimize the likelihood of a transfer occurring (and this may have been a reasonable position to assume if her interviewer would not accept that she was transferable). This audacious display appears to have infuriated Mr. Hannah and the meeting ended rather

unpleasantly. Mr. Hannah's testimony with respect to the purported letter for unemployment insurance purposes is suspect. The Complainant was convincing in her denial that she ever requested or received such a letter.

This Board accepts Mr. Blue's argument with respect to the interpretation of section 4(1)(a) of the Ontario Human Rights Code, based upon the comments of Chairman S.N. Lederman in the Complaint of Betty Anne Shack against London Drive-Ur-Self Limited and Walter B. Phillips (June 7, 1974, at pp. 12-14). The Respondent, Beneficial Finance System, has contravened section 4(1)(a) of the Code by refusing to refer or to recruit the Complainant, Helen Niedzwiecki, for employment because of her marital status.

However, the evidence falls short of establishing that there was a company policy of preferring males or even single women for managerial positions. It is true that the statistics provided indicate that the Respondent employs many more male managers than females. They also indicate that in the lowest category of employment i.e. "cashiers" or "customer service representatives", the company employed 92 females in 1980 and 83 females in 1979 but not a single male in either year. Mr. Hannah also stated that it was company policy to prefer males. However, the weight of evidence indicates that the Respondent has clearly adopted policies of non-discrimination. The adopted company policy seems simply to have broken down in its application by one local manager. It has not been established that the contravention in question was encouraged or condoned at any higher level of management.

The Complainant acknowledged that the question of a possible conflict of interest on her part was raised by Mr. Hannah during the interview. It was a factor which Mr. Hannah had in mind and which was specifically raised. However, as indicated earlier, it was not his main concern and he seems to have mentioned it almost in passing. Nor did he emphasize it during his subsequent interview with Mr. Polley of the Ontario Human Rights Commission.

Nevertheless, Mr. Schoen, a Vice-President of the Respondent, testified that it was the company's policy not to hire the spouse of an employee of a competitor. The business in question is highly competitive and AVCO is one of the four major competitors of the Respondent. The Beneficial office in Kingston competes directly with the AVCO office in Ganonoque, which is only sixteen miles away. The potential conflict of interest is obvious and the Complainant conceded that the absence of such a conflict was a reasonable qualification for the position in question. In fact, she lost her position with AVCO because of that company's policy that it would not employ both a husband and wife in the same district.

Thus, while the circumstances of the interview did constitute a contravention of the Code, it is highly unlikely that the Complainant would have been hired by the Respondent, even if Mr. Hannah had recommended that she be hired. The potential conflict of interest would have been a valid basis for not hiring her. This factor is significant with respect to the appropriate order to be made pursuant to section 14 c. (b) of the Code.

Counsel for the Commission requested that the order include compensation to the Complainant at the salary which she would have received (\$900 per month) for the seven months following the interview during which she remained in Kingston but was unable to find employment. For the reasons given in the previous paragraph, such an order is not appropriate. However, the Complainant is entitled to a letter of apology and to payment of the sum of \$250 by way of a general award for the humiliation and frustration caused by the Respondent's discriminating act.

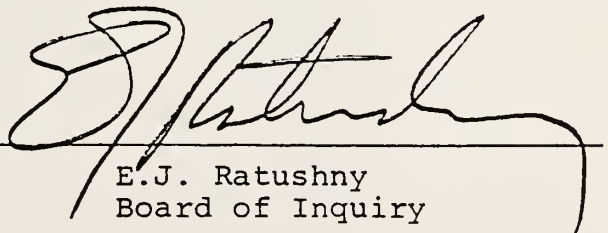
Counsel for the Commission requested that any order include a requirement that the Respondent company co-operate with the Ontario Human Rights Commission and the Woman's Bureau of the Ontario Ministry of Labour in attempting to design a program which would reduce the imbalance between men and women in senior positions. Counsel for the Commission also requested that such order include a requirement that the Respondent provide the Commission with sufficient information and statistics with respect to its employment practices to permit the Commission to monitor those practices for a period of 12 months.

This Board is of the view that such requirements are appropriate in the circumstances. Although the Respondent has adopted policies of non-discrimination, those policies may not always be respected in practice. In view of its express commitment to respect the provisions of the Ontario Human Rights Code, the Respondent should welcome this assistance in ensuring that the actual practices of its servants and agents do correspond with the company's policy in this area.

It is, therefore, ordered that the Respondent, Beneficial Finance System:

1. Write a letter of apology to the Complainant, Helen Niedzweicki;
2. Pay the sum of \$250 by way of general compensation to the Complainant, Helen Niedzweicki;
3. Co-operate with the Ontario Human Rights Commission and the Women's Bureau of the Ontario Ministry of Labour in attempting to design and implement a program which would reduce the apparent imbalance between men and women in senior positions in the company; and,
4. Provide the Ontario Human Rights Commission with sufficient information and statistics with respect to its employment practices to permit the Commission to monitor those practices for a period of 12 months from the date of this order.

Dated this 26th day of June, 1981.



E.J. Ratushny
Board of Inquiry

